

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

SIMONE D. TEIXEIRA-MCCRAY., an
individual,

Plaintiff,

v.

NATIONAL NOTE OF UTAH, LC, a Utah
limited liability company,

Defendants.

NOTICE OF REMOVAL

Case No.

Judge

**(Removed from the Superior Court for
the State of Alaska at Anchorage, State
Case No. 3AN-12-6062CI)**

Defendant National Note of Utah hereby gives notice, pursuant to 28 U.S.C. § 1441, et seq., of the removal of the civil action commenced by Simone d. Teixeira-Mccray ("Teixeria"). in the Superior Court for the State of Alaska of Anchorage, Civil No. 3AN-12-6059. Copies of all process and pleadings served upon National Note of Utah in the state court action are attached hereto pursuant to 28 U.S.C. § 1446(a) as **Exhibit A**.

PROCEDURAL BACKGROUND

1. On or about March 20, 2012, Plaintiff commenced suit in the Superior Court for the State of Alaska at Anchorage by filing an action entitled *Simone D. Teixera-Mccray v. National Note of Utah*, Civil No. 3AN-12-6059.

2. On March 27, 2012, copies of the Summons and Complaint were served upon Wayne Palmer, registered agent for National Note of Utah, LC.

3. Attached hereto as **Exhibit A** are true and correct copies of the Summons and Complaint. The Summons, Complaint, Motion for Temporary Restraining Order and Application for Preliminary Hearing along with a supporting memorandum constitute all of the papers and pleadings served upon National Note of Utah, LC.

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4. There are no other defendants named in the lawsuit.

5. A copy of this Notice of Removal is being served upon plaintiff through its counsel, and upon the clerk of the Superior Court for the State of Alaska at Anchorage, as provided by 28 U.S.C. §1446(d). *See* Notice of Removal filed in state court attached as **Exhibit B**.

6. This Notice of Removal is filed in a timely manner under 28 U.S.C. § 1446(b).

NATURE OF THE CLAIM

7. Plaintiff Teixeira is the holder of a promissory note executed by National Note of Utah on or about November 1, 2010. Teixeira alleges that National Note of Utah has breached the promissory note and owes it approximately \$100,000.00. National Note of Utah disputes the allegation it has breached the terms of the promissory notes and any amendments made between the parties.

DIVERSITY JURISDICTION

8. Jurisdiction exists over this removed action pursuant to 28 U.S.C. §1441(b), because this action could originally have been filed in this Court pursuant to 28 U.S.C. §1332. Federal diversity jurisdiction exists over this action pursuant to 28 U.S.C. §1332 because Teixeira and National Note of Utah are completely diverse and the amount in controversy exceeds \$75,000. Plaintiff is a resident of the State of Alaska. *See* Complaint at ¶ 1. Defendant is a Utah limited liability company. **Exhibit C**. Accordingly, plaintiff and defendants are completely diverse.

AMOUNT IN CONTROVERSY

9. The amount in controversy in this case exceeds \$75,000.00. Under 28 U.S.C. § 1332(a), the amount in controversy in a case where federal jurisdiction is based on diversity of citizenship must exceed \$75,000, exclusive of interest and costs. The “amount in controversy” is “an estimate of the amount that will be put at issue in the course of the litigation.” *McPhail*

v. Deere & Co., 529 F.3d 947, 956 (10th Cir. 2008). “[A] plaintiff cannot avoid removal merely by declining to allege the jurisdictional amount. This would allow frustration of the purpose of diversity jurisdiction, which is, after all, to protect the out-of-state defendant.” *McPhail*, 529 F.3d at 955.

10. The controversy before the Court involves a claim that Defendant owes Plaintiff \$100,000.00 under a promissory note.

REMOVAL IS PROPER

11. Because the amount in controversy exceeds \$75,000 and there is complete diversity between Plaintiff and all Defendants, this action may be removed to this Court on diversity grounds under 28 U.S.C. § 1441.

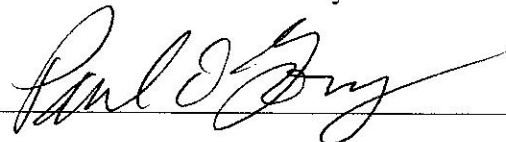
12. The United States District Court for the District of Alaska is the federal judicial district embracing the Superior Court of Alaska for Anchorage, where this action was initially commenced. Venue, therefore, is proper in this District under 28 U.S.C § 1441(a).

13. Pursuant to U.S.C. § 1446(d), a copy of this Notice of Removal is being served upon Plaintiff through its attorney of record, and upon the Clerk of the Superior Court of Alaska for Anchorage.

WHEREFORE, National Note of Utah prays that the above-entitled action now pending in the Superior Court of Alaska for Anchorage, be removed to the United States District Court for the District of Alaska, and prays that said action remain so removed.

Dated this 27th day of April, 2012.

Law Office of Paul D. Tony



Paul D. Tony ABA # 9081002
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2012, I served the foregoing **NOTICE**

OF REMOVAL via U.S. mail upon the following:

G.R. Eschbacher
718 Barrow Street
Anchorage, AK 99501
Tel (907) 276-8001
Fax (907) 279-7543

A handwritten signature in cursive script, appearing to read "Paul D. Tony", is written over a horizontal line.

PAUL D. TONY
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